

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

NISUS CORPORATION,

Plaintiff,

v.

SCHIRM USA, INC.,

Defendant.

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Civil Action No. \_\_\_\_\_

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, Nisus Corporation, for its complaint against Defendant, Schirm USA, Inc., states as follows:

PARTIES

1. Nisus Corporation (Nisus) is a corporation of the state of Tennessee having a principal place of business at 100 Nisus Drive, Rockford , Tennessee 37853.

2. On information and belief, Schirm USA, Inc. (Schirm) is a corporation of the state of Texas having a place of business at 2801 Oak Grove Road, Ennis, Texas 75119.

JURISDICTION AND VENUE

3. This is a civil action for copyright infringement under the Copyright Act of 1976, 17 U.S.C. §§101 et seq., this court having jurisdiction under 28 U.S.C. §§ 1338 and 1400.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(a).

## BACKGROUND FACTS

5. At all times relevant hereto NISUS has been in the business of manufacturing and distributing pesticide formulations.

6. Since at least as early as 1991, Nisus has made and distributed a termiticide, insecticide, and fungicide concentrate under its trademark FINACIDE LQ™.

7. The BORA-CARE® products over the years have borne labels to direct users how to use the product ("Labels").

8. The BORA-CARE® concentrate and the Labels are registered with the Environmental Protection Agency (EPA).

9. The EPA has extensive requirements associated with its label review process.

10. Nisus expended considerable, time, effort and monies in development of the Labels so that they would be accepted by the EPA.

11. Schirm has submitted an application to the EPA to register a termiticide, insecticide, and fungicide concentrate known as FINACIDE LQ™.

12. Schirm has represented to the EPA that the FINACIDE LQ™ product is a "me-too" product of the BORA-CARE® product and that the FINACIDE LQ™ product is substantially similar or identical in its uses and formulation to the registered BORA-CARE® product.

13. Schirm submitted to the EPA a label for the FINACIDE LQ™ product ("Infringing Label") that is a substantial copy of one or more of the Labels of the BORA-CARE® product.

14. Nisus is the sole owner of all right, title and interest to the copyright to the Labels.

15. The Labels embody copyrightable subject matter under the laws of the United States of America.

16. Nisus uses the Labels or derivative works of the Labels in connection with the distribution and sale of the BORA-CARE® product.

17. Nisus is the owner of U.S. Copyright Registrations TX 3-378-259; TX 3-389-553; TX 6-243-440; TX 6-243-441; TX 6-243-442; TX 6-243-443; TX 6-243-444; TX 6-243-445; TX 6-243-446 for the Labels.

#### COPYRIGHT INFRINGEMENT

18. Nisus realleges and incorporates all of the preceding paragraphs as if fully set forth herein.

19. Schirm had access to the Labels.

20. Schirm copied or caused to be copied one or more of the Labels of Nisus in its substantial entirety producing the Infringing Label.

21. Schirm knowingly and willfully copied or caused to be copied the Labels in producing the Infringing Label.

22. Schirm has offered for sale and/or sold product bearing the Infringing Label to others.

23. The acts of Schirm constitute willful infringement of copyright.

24. Nisus has sustained irreparable as well as compensable damages, harm and injury as a result of the wrongful conduct of Schirm.

25. Nisus is presently unable to ascertain the full nature and extent of the monetary damages it has suffered, and will suffer, by reason of Schirm's acts, but nevertheless seeks all available damages.

26. In committing the acts alleged above, Schirm has engaged and continues to engage in infringement of the copyright in the Labels to Nisus's irreparable harm.

27. Unless enjoined by this court, Schirm will continue to infringe upon and otherwise profit from the Labels.

28. Nisus will continue to suffer irreparable damage unless and until the acts of Schirm are enjoined by this court.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nisus prays this Court to grant the following relief against Defendant Schirm:

a) That Defendant Schirm, its agents, employees, successors, assigns, and all other persons acting in concert with or affiliated with it, be permanently enjoined and restrained from copying, reproducing, manufacturing, duplicating, disseminating, distributing, or otherwise using any unauthorized copies of the Nisus Label which are the subject of this Complaint, and from otherwise infringing Nisus's copyrights in said Labels;

b) That Defendant Schirm be ordered to file, within 30 days of the injunction's issuance of the injunction and/or order of impoundment, a sworn report setting forth in detail the manner in which he has complied with the injunction and order of impoundment;

c) That Defendant Schirm be ordered to conduct an accounting of all profits derived from making, using, marketing or selling unlicensed copies of the Infringing Label which is the subject of this Complaint;

d) That Nisus be awarded its actual damages or, in the alternative, its statutory damages for willful infringement in the amount of \$150,000 per violation; and

e) That Plaintiff be awarded attorneys' fees, costs, and any further relief the court deems just and proper.

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